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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Petition for Rulemaking to Establish	)	
Compensation Proxies for Call	)	
Termination Between Local Exchange	)	
Carriers and Paging Mobile	)	Docket No. _____
Radio Service Providers	)	RM: _____
	)	

To: The Commission

METROCALL
PETITION FOR RULEMAKING

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SUMMARY

Metrocall respectfully requests that the FCC commence a rule making proceeding to establish rules and proxies for compensation of paging carriers for LEC-originated calls that are terminated on paging networks. The time is ripe for the FCC to undertake this rule making: the Eighth Circuit has recently upheld the FCC's authority over LEC-CMRS interconnection matters. Paging carriers have previously submitted several possible models or "proxies" to the FCC to determine reasonable compensation for the termination of LEC-originated traffic on paging networks; any of those proposals would serve as a reasonable starting point for this rule making proceeding.

LEC/paging interconnection arrangements have long been unfair to paging carriers. LEC/paging telephone traffic travels in only one direction: from the LEC customer, terminating on the paging network. LECs bill the calling party for those calls, and have historically charged the paging carrier exorbitant monthly fees for the transport and termination of LEC-originated calls. This form of LEC double-billing, and the unjust and unreasonable imposition of charges on paging companies, are inimical to the Communications Act, and the Telecom Act's amendments thereto.

The FCC should assert its plenary power over LEC/paging interconnection. As the Eighth Circuit has determined, Section 332(c)(3)(A) of the Act provides a statutory basis for FCC authority over this issue, and, in conjunction with Section 2(b), precludes state authority in this area. Moreover, nothing in the Telecom Act restricts the preemptive scope of Section 332(c)(3)(A). Indeed, subjecting inherently interstate paging operations to regulations and arbitration proceedings before 50 state commissions, would serve as an entry barrier to paging

services, contrary to the letter and spirit of the Telecom Act.

Paging communications are truly jurisdictionally interstate. As with all spectrum-based communications, radio waves simply do not stop at state borders. Moreover, because of the design of paging networks, it would be impossible for a carrier to pinpoint the rare instance when a call to a pager originates and terminates entirely within a single state; the "intrastate" component of the paging transmission -- if there is one -- is inseparable from the interstate portion. Consequently, even under a traditional preemption analysis, the exercise of exclusive federal jurisdiction in this area is warranted.

In short, the FCC has authority over LEC/paging transport and termination charges under the Act, and that authority is plenary. In light of the long history of unjust and unreasonable charges imposed by LECs upon paging carriers, the FCC should promptly institute a rule making to establish rules governing those charges.

Before the
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Petition for Rulemaking to Establish Compensation Proxies for Call Termination Between Local Exchange Carriers and Paging Mobile Radio Service Providers	)	Docket No. _____ RM: _____

To: The Commission

METROCALL PETITION FOR RULEMAKING

Metrocall, Inc., through its undersigned counsel, and pursuant to Section 1.415 of the FCC's Rules, 47 C.F.R. § 1.415, hereby petitions the Commission to initiate a rulemaking proceeding. The purpose of that rulemaking proceeding would be to determine appropriate "proxies" and enforcement mechanisms concerning compensation to be paid to paging carriers for terminating local exchange traffic.

I. Statement of Interest

Metrocall is currently the fifth largest paging company in the nation (NASDAQ trading symbol: "MCLL").[1] Through its licensee-subsidiary, Metrocall USA, Inc., Metrocall provides commercial radio paging services throughout most of the United States. Through its corporate predecessors, Metrocall has provided paging services for more than a decade, and it continues to undergo tremendous growth. Metrocall provides local, regional, and nationwide paging services

[1] Metrocall and ProNet Inc., the nation's seventh largest paging company, recently filed for FCC approval of the proposed merger of these two companies. Following the completion of that merger, Metrocall would be the nation's second largest paging company.

throughout the United States. Metrocall currently serves more than two million subscribers over its paging facilities, and is actively pursuing business plans to increase its customer base nationwide.

Due to its size, Metrocall has interconnection agreements or arrangements with well over 30 different Local Exchange Carriers ("LECs") throughout the United States. To date, not one of these LECs has compensated Metrocall for terminating LEC-originated traffic on Metrocall's paging network. Because paging carriers are entitled to call termination compensation under the FCC's rules, and Metrocall is a member of that class of paging carriers entitled to compensation, Metrocall has standing and is an appropriate party in interest to submit this petition for rulemaking.

II. The Purpose of this Petition

The central purpose of this Petition is to continue the regulatory task that the FCC began last year in its Interconnection Order rulemaking proceedings. In particular, the FCC stated therein that it would initiate a further proceeding: "to determine what an appropriate proxy for paging costs would be and, if necessary, to set a specific paging default proxy."[2]

That rulemaking proceeding sought to implement the local competition provisions of the Telecommunications Act of 1996 (the "Telecom Act")[3] (CC Docket No. 96-98). In addition, in light of pertinent statutory changes caused by the Telecom Act, the FCC in that proceeding

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[2] "Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, et al.", First Report and Order, CC Docket Nos. 96-98, et al.; FCC 95-185 at ¶ 1093 (released August 8, 1996) (the "Interconnection Order"), aff'd in part and rev'd in part, Iowa Utilities Board v. FCC, No. 96-3321, et seq., slip. op. (8th Cir., July 18, 1997).

[3] Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (1996).

adopted new rules and policies governing interconnection between LECs and Commercial Mobile Radio Services ("CMRS") (CC Docket No. 95-185).

Although the U.S. Court of Appeals for the Eighth Circuit recently overturned most of the FCC's "local competition" provisions, that decision expressly affirmed the FCC's "authority to issue the rules of special concern to the CMRS providers." [4] Consequently, the FCC's Interconnection Order rules and conclusions concerning LEC/CMRS interconnection are sound. It is appropriate and timely for the FCC to continue the task of adopting rules and proxies to ensure that paging carriers are fairly compensated for their costs of completing LEC-originated calls. Moreover, the FCC should assert its plenary jurisdiction over paging compensation issues, so that paging carriers will not be forced to litigate these matters in protracted and potentially inconsistent state proceedings.

III. Regulatory History of LEC/Paging Reciprocal Compensation

Historically, LEC/paging interconnection arrangements have been egregiously unfair to paging carriers. For the most part, telephone traffic in a typical LEC/paging interconnection arrangement travels only in one direction: into the paging network. Typically, a calling party has been charged by a LEC or an interexchange carrier for the "privilege" of making a call to a paging network; hence, the LECs have historically already recovered most of their network costs from the calling party. Nevertheless, on top of that, the LECs have charged paging carriers enormous monthly recurring fees for transporting and terminating millions of LEC-originated "calls" into the paging carrier's network. Each of these calls lasts only a fraction of a second, and

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[4] Iowa Utilities Board v. FCC, at 114, n. 21.

imposes no great burden on the LEC's network. In short, the LECs have essentially been double-billing paging traffic for decades; while paging carriers received no compensation for assisting LECs in terminating this LEC-originated traffic.

Since paging carriers rely upon monopoly LEC services to provide interconnected service to their paging customers, they have had no practical way of avoiding being treated by the LECs as mere "customers" rather than co-carriers. Relatively recent statutory and regulatory developments were intended to rectify these inequities. Change began when Congress passed the Omnibus Budget Reconciliation Act of 1993, which, among other things, amended the Communications Act to create the new "Commercial Mobile Radio Service" definition for cellular, PCS and paging companies. The amendments to Section 332 of the Act also codified the "carrier" status of CMRS operators, and specifically granted the FCC authority to enforce CMRS interconnection rights. See 47 U.S.C. § 332(c).

In its CMRS Second R&O,[5] the FCC promulgated rules to enforce Congress' mandate, and expanded CMRS operators' interconnection rights. In doing so, the FCC adopted the following interconnection requirements: (1) LECs and CMRS providers shall compensate each other for the reasonable costs incurred in terminating traffic on the basis of mutual compensation; (2) LECs shall establish reasonable charges for interstate interconnection provided to CMRS licensees; and (3) LECs shall make available the same type of interconnection arrangements that the LECs make available to any other carriers. Id. at ¶ 232-234. This was the first time that the FCC addressed specific rates and cost-sharing arrangements

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[5] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 (1994) ("CMRS Second R&O").

for LEC-CMRS interconnection.

It is fair to say that these heightened statutory and regulatory interconnection requirements were subsequently obeyed by the LECs far more in the breach than in the observance. In the ensuing years, every LEC in the nation uniformly ignored their statutory and regulatory obligations to compensate paging companies for calls terminated on the paging networks. To the best of Metrocall's knowledge, no paging carrier has ever been compensated by any LEC for local call termination.

The Telecom Act, and the FCC's efforts to implement it, should have finally given the paging industry the effective legal relief and compensation that the FCC had previously striven to accomplish. The LEC/CMRS interconnection rules adopted by the FCC in its Interconnection Order accurately reflected the statutory obligations imposed on *all* LECs by the Telecom Act. In adopting the Telecom Act, Congress sought to break-down the local telephone network to its basic elements, thereby promoting competitive access to that local market. See Conference Report, accompanying Senate Bill 652 (the Telecom Act). Consistent with that goal, Section 251(b) of the Telecom Act, upon which the FCC's interconnect rules are based in part, states that LECs have the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." See 47 U.S.C. §251(b).

The FCC's Interconnection Order made several findings and conclusions that are critical to ensuring fair and equitable compensation for paging carrier termination of local exchange traffic. The FCC concluded that "a LEC may not charge a CMRS provider or other carrier for terminating LEC-originated traffic", and, as of the "effective date" of that FCC Order (August 30, 1996), the LEC "must provide that [LEC-originated] traffic to the CMRS provider or other

carrier without charge." [6]

Moreover, the FCC declared that "LECs are obligated ... to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks ...."[7] The FCC concluded that any CMRS provider that is operating under an interconnection agreement that was entered into prior to August 8, 1996, may renegotiate that contract if the agreement does not provide reciprocal compensation. The FCC noted that the LECs' "mutual compensation" obligations predate the Telecom Act, and are required under Section 20.11 of the FCC's rules.[8]

The FCC admittedly did not finish the task of establishing reciprocal compensation proxies and rules for paging carriers in its Interconnection Order. With respect to two-way CMRS operators, the FCC concluded that "presumptive symmetrical rates [should be] based on the incumbent LEC's costs for transport and termination of traffic." Interconnection Order at ¶ 1092. The FCC also concluded; however, that paging networks and traffic are different than two-way CMRS networks:

> While paging providers, as telecommunications carriers, are entitled to mutual compensation for the transport and termination of local traffic, and should not be required to pay charges for traffic that originates on other carriers' networks, we believe that incumbent LECs' forward-looking costs may not be reasonable proxies for the costs of paging providers. .... Given the lack of information in the record concerning paging providers' costs to terminate local traffic, we have decided to initiate a further proceeding to try to determine what an appropriate proxy for paging costs would be and, if necessary, to set a specific paging default proxy.

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[6] Interconnection Order at ¶ 1042.

[7] Id. at ¶ 1008 (emphasis added).

[8] Id. at ¶ 1094.

Id. (emphasis added).

That is where the issue stands today. The FCC presumably wanted to see the outcome of the appeals of its Interconnection Order before taking any further steps to implement its interconnection/paging compensation rules. Now that the Iowa Utilities Board decision has reaffirmed the FCC's primacy over LEC/CMRS interconnect matters, Metrocall respectfully submits that the time has come to continue the FCC's good work in this area. The paging industry is eminently entitled to, and prepared to assist the FCC in formulating, rules that will govern compensation to paging carriers for their transport and termination of local traffic. Moreover, in light of FCC primacy over LEC/CMRS interconnection matters, and the interstate nature of paging services, it makes eminent good sense and good law for these matters to be resolved exclusively before the FCC, rather than before 50 different and potentially conflicting state utility commissions.

IV. Suggested Proxies/Compensation Models

To achieve fair and equitable compliance with the Communications Act and the FCC's interconnection rules, narrowband providers should be permitted to charge reasonable fees for the use of their networks in terminating calls. The paging industry previously provided the FCC with several possible models or "proxies" when the FCC initiated its LEC/CMRS rulemaking proceeding more than two years ago. Any one of these proposals would serve as a reasonable starting point for this next rulemaking proceeding.

For instance, in previous industry meetings regarding the FCC's reciprocal compensation plans, several members of the paging industry suggested the following formula for compensation: access charges (switching plus transport), minus the common carrier line ("CCL")

and transport interconnection charge ("TIC") (sometimes referred to as the residual interconnection charge). Another option would be for paging companies to receive a fixed percentage of the amount charged by the LEC to its subscribers. A simple and administratively easy formula would be 10% of the message unit or per minute standard rate for local calls. The LECs should not object to this formula, since many of them used to (some still do) similarly charge paging carriers on a "per call" basis for certain interconnect services, such as "Type 1" service. In addition, LECs should pay the entire cost of the entrance facilities to the narrowband network, since the traffic is mobile terminating. The entrance facilities should include all physical transmission circuits up to the CMRS mobile telephone switching office ("MTSO").

Many paging carriers and industry groups have been researching this call termination/cost compensation issue for many years. The costs and designs of most paging networks are relatively similar (there are obvious exceptions, such as nascent two-way paging networks). Consequently, it should not take very long for the industry to provide the FCC with the information necessary to adopt fair and equitable cost-compensation models for paging carriers. This process should begin right away.

V. The FCC Should Assert its Jurisdiction over Paging Compensation

The Iowa Utilities Board decision reaffirmed what the CMRS industry has known for decades: the FCC has plenary jurisdictional authority over LEC/CMRS interconnection matters. Hence, there should be no legal impediments to the FCC's adoption of cost models, proxies, and rules for paging compensation. Moreover, the FCC should be the exclusive forum for resolving any LEC/paging carrier disputes concerning call termination compensation. Metrocall will briefly state just a few legal and practical reasons why the FCC ought to assert exclusive

jurisdiction over these compensation matters.

A. Section 332 (c)(3)(A) Preempts State Regulation.

The Iowa Utilities Board decision expressly cited Section 332 of the Act as a statutory basis for the FCC to implement LEC/CMRS interconnection rules; and, it cited Section 2(b) as authority for "preclud[ing] state regulation" in this area. See Iowa Utilities Board v. FCC, at 114, n. 21. Section 332(c)(3)(A) of the Act provides that no state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service. 47 U.S.C. § 332(c)(3)(A). Section 2(b) of the Act generally reserves to the states authority to regulate only intrastate communications. 47 U.S.C. § 2(b).

The 1993 Budget Act carved out an exception to the states' regulatory authority over intrastate communications to include Section 332. This seems to suggest, and the Iowa Utilities Board Court apparently agreed, that states no longer have plenary authority over all intrastate communications with regard to commercial mobile communications. Congress essentially removed the states' authority in the area of entry or rates charged by commercial mobile services. It surely can be inferred that the "rates charged by mobile services" includes interconnection charges assessed on CMRS providers, or charged by CMRS providers. That logical statutory interpretation would in effect bar states from regulating in this area. "[W]here Congress acts pursuant to a plenary power, it may specifically prohibit parallel state legislation, i.e., occupy or preempt, the field."[9] Consequently, the FCC alone ought to be adopting rules to compensate paging carriers for local call termination, and, the FCC alone ought to enforce these rules.

Support for this conclusion can be found in the legislative history of Section 332. The

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[9] J. Nowak, R. Rotunda, & J. N. Young, Const. Law 267 (1978) (citation omitted).

House Report states that "the Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network."[10] Further evidence of federal intent to preempt this entire area of regulation can be found in Congress' decision to allow the FCC to forbear from enforcing specific Title II regulations against CMRS providers, under certain conditions. See, CMRS Second R&O at ¶ 124. Section 332(c)(1)(A) provides that the Commission may determine that any provision of Title II is not applicable for commercial mobile services, thereby giving the Commission wide latitude in its regulatory authority. 47 U.S.C. § 332(c)(1)(A).

Moreover, Section 251(d)(3) of the Telecom Act seems to preserve to the states only regulatory authority with regard to interconnection in instances in which any state regulation is not inconsistent with the requirements of Section 251 and does not substantially prevent the FCC from implementing the requirements of that section. Finally, Section 253 of the Telecom Act, entitled Removal of Barriers to Entry, states that: "No state or local statute or regulation ... may prohibit or have the effect of prohibiting the ability of an entity to provide any interstate or intrastate telecommunications service." Section 253(e) states that: "Nothing in this section shall affect the application of Section 332(c)(3) to commercial mobile service providers." In summary, in passing the Telecom Act, Congress did not appear to be altering the historic preemptive scope of the Commission's regulatory authority over CMRS providers with respect to LEC-interconnection matters.

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[10] House Report on H.R. 2264 at 261 (1993).

B. State Regulation of Paging Compensation Would Erect Entry Barriers in the CMRS Marketplace.

The FCC's assertion of its jurisdictional powers over LEC/paging compensation regulations is critical for the development of competitive paging services. The underlying purpose of a single, federal regulatory scheme in this area is to promote competition by refocusing efforts away from strategies in the regulatory arena and toward technological innovation, service quality, competitive pricing and responsiveness to consumer needs.[11] To allow individual states to impose inconsistent cost-compensation regulations on paging carriers would contradict the Congressional mandate, and would substantially interfere with these Congressional objectives.

In the absence of FCC assertion of exclusive jurisdiction, the states would, in essence, be creating barriers to entry in the CMRS marketplace. A nationwide paging provider could potentially have to comply with 50 different mutual compensation policies, in 50 different states, or, worse yet, engage in hundreds of PUC-adjudicated arbitration proceedings with hundreds of LECs. Paging carriers would consciously avoid doing business, or not expand existing service into those states and local municipalities with unfavorable regulations, for the single purpose of avoiding inconsistent and onerous interconnection compensation regulations. And, paging carriers would be unfairly deprived of reasonable compensation for LEC usage of their paging networks, since these state arbitration costs could conceivably outstrip the compensation to be recovered from the LECs. The FCC must take this opportunity to declare that federal

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[11] See, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rule Making and Notice of Inquiry in CC Docket No. 94-54, 9 FCC Rcd. 5408, ¶ 2 (1994) (quoting CMRS Second R&O).

interconnection policy preempts inconsistent state regulation; any other action would be contrary to federal authority and policy.[12]

C. The Interstate and Intrastate Aspects of Paging are Inseparable.

Paging is surely a mobile form of communications; the typical path of a page does not stop at state borders. For the past several years, more and more paging companies have been offering multi-state and nationwide paging service. It is difficult, if not impossible, to sever the intrastate and interstate aspects of a paging service. For example, in the instance where a caller in California is paging a person in California, these days the call is most likely to be routed through interstate facilities.

Because paging is inherently interstate in nature, pursuant to Section 201(a) of the Act, the FCC has authority to preempt state regulations pertaining to LEC/CMRS compensation arrangements. By illustration, in Mobile Telecommunications Technologies Corp., the FCC preempted state regulation of nationwide paging service on the basis that the interstate and intrastate components of the paging service were impossible to separate.[13] The FCC concluded: "Although the [Common Carrier] Bureau recognized that a page potentially could originate and terminate in the same state over MTel's nationwide paging system, the Bureau concluded that MTel's system does not permit the carrier to ascertain when or how frequently such intrastate pages may occur. " Id. at 1500. Based on these facts, the FCC concluded that the nationwide

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[12] See e.g. Norlight Request for Declaratory Ruling, 2 FCC Rcd 132, 135, recon. denied, 2 FCC Rcd 5167 (1987) (FCC preempted Wisconsin PSC's regulation of an interstate fiber optic network finding that inter alia the PSC's restrictions improperly encroached on the federal statutory authority over interstate communication).

[13] 6 FCC Rcd 1938 (Com. Car. Bur. 1991), review denied 7 FCC Rcd 4061 (1992).

paging service was subject to exclusive federal jurisdiction. Id.

Preemption of state regulation is valid when interstate and the interstate components are inseparable, and would impede the Commission's authority over interstate service.[14] That is surely the case in the predominantly interstate paging business. State compensation regulations would preclude the FCC from realizing its goals of competition and developing a nationwide wireless network; they should be preempted, and the FCC should adopt uniform nationwide standards for compensating paging carriers.

D. These Issues Concern Interstate Communications.

The FCC has jurisdiction over compensation models for paging carriers because all of the affected parties are engaged in the provision of interstate communications. Federal Courts and this Commission have consistently emphasized that they consider the end-to-end nature of communications, rather than the individual components used, in determining whether interstate communications are concerned. See National Association of Regulatory Utility Commissioners v. FCC, 746 F.2d 1492, 1498 (D.C. Cir. 1984); see also, Teleconnect Company v. Bell Telephone of Pennsylvania, et al., 69 RR2d 1335 (Com. Car. Bur. 1991), review denied 77 RR2d 409 (1995). Hence, there is a presumption that interstate communications extends from the inception of a call to its completion. Puerto Rico Telephone Company v. FCC, 553 F.2d 694, 699 (1st Cir. 1977). Under these principles, since the interconnected paging services in question provide interstate calls, the Commission has jurisdiction.

The LECs provide interconnect services to the nationwide telephone network, subject to

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[14] See e.g. Louisiana Public Service Commission v. FCC, 476 U.S. 355, 375 n.4 (1986); NARUC v. FCC, 800 F.2d 422 (D.C. Cir. 1989).

FCC regulation under Title II of the Act. See 47 U.S.C. § 151, et seq. CMRS paging operators provide mobile radio services that are interconnected with the interstate PSTN; end-to-end interstate communications are regularly transmitted over paging radio networks. Moreover, in the case of paging companies, their wide-area radio network facilities frequently cross interstate borders.

Since CMRS paging services are interconnected with the PSTN, and interstate telephone calls are carried over these paging facilities, the Commission has jurisdiction over these interconnect matters under Title II of the Act. See Fairmount Telephone Co., Inc. v. Southern Bell Tel. & Tel. Co., 53 RR 2d 639 (Com. Car. Bur., 1983); see also, TPI Transmission Services, Inc. v. Puerto Rico Telephone Company, 66 RR2d 257, 260 (1989).

E. The FCC has Jurisdiction over Interconnect Disputes.

The FCC, through a series of "Policy Statements" and "Declaratory Rulings," has historically and routinely exercised its jurisdiction over interconnection matters to ensure that interconnection to the nationwide telephone network will be provided by the wireline telephone companies on fair and reasonable terms. See, e.g., Cellular Interconnection (Declaratory Ruling), 2 FCC Rcd. 2910 (1987); see also, Radio Common Carrier Services (Post-Divestiture BOC Practices), 59 RR 2d 1275 (1986).

The issues to be addressed by the FCC in this proposed rulemaking proceeding have naturally evolved from decades of interconnection problems and proceedings between CMRS operators and the LECs. For example, in Offer of Facilities for Use by Other Common Carriers, 52 FCC 2d 727 (1975), the FCC accepted a Settlement Agreement ending an FCC investigation into the lawfulness of Bell System tariffs offering interconnection facilities for use by other

common carriers. There, the FCC dealt with such interconnect issues as whether the LECs had discriminated against radio common carriers ("RCCs") in the provision of interconnect services, and whether the RCCs should be provided interconnect services pursuant to tariff, rather than intercarrier contract. See Domestic Public Land Mobile Radio Service, 63 FCC 2d 87, 88 (1977).

Ultimately, that nearly decade-long Complaint and investigation proceeding resulted in the adoption of a "Memorandum of Understanding" between the telephone companies and the RCCs, which brought such benefits to the RCCs as lower central office number rates, and the implementation of the Single Number Access Plan ("SNAP"). See Memorandum of Understanding, 80 FCC 2d 352, 354 (1980).

Here, Metrocall's Petition in certain respects asks the FCC to investigate on-going unjust and unreasonable LEC interconnection prices and practices; in particular, the LECs' failure to compensate paging carriers for local call termination; and, to adopt rules, models, and proxies to cure those apparent violations of the Act. The FCC certainly has authority to determine whether the LECs' interconnection practices are "just, fair and reasonable" under the Act. For instance, the FCC has expressly ruled that "the physical plant used in the interconnection of cellular [and RCC] carriers to landline carriers is within our plenary jurisdiction because the identical plant serves both intrastate and interstate cellular services." Cellular Interconnection, 2 FCC Rcd. 2910, 2911 (1987) (emphasis added). Since interstate calls are transmitted through paging networks, the FCC has jurisdictional authority to ensure that the terms and conditions of the LECs' interconnect services are "reasonable." Id. at 2911

F. The FCC has Complaint Authority to Ensure that all LECs Provide Reasonable Compensation to Paging Carriers.

The FCC has previously ruled that if a telephone company refuses a reasonable request for interconnection services, has caused unreasonable delays in providing the interconnection, or imposes unreasonable charges for the interconnection, the aggrieved party may file a Section 208 Complaint with the FCC. Id. Since paging carriers could presumably seek FCC action against the LECs through the formal complaint process, it stands to reason that the FCC has authority to address this compensation problem comprehensively through a formal rulemaking proceeding. Metrocall presumes that the FCC, and indeed the LECs, would prefer that this matter be resolved through one rulemaking process, rather than through hundreds of formal complaint proceedings against all the LECs, seeking damages, rebates, and rate adjustments for unjust and unreasonable failure to compensate paging carriers for local call termination. See, e.g., 47 U.S.C. §§ 206, 207, 208 & 209.

G. The FCC has Jurisdiction under Title III.

To Metrocall's knowledge, many paging operators have formally and informally complained to the FCC that LECs are violating the Telecom Act and the FCC's Rules by refusing to compensate paging carriers for local call termination. Many of these LECs are licensed by the FCC, either directly or indirectly, pursuant to Title III of the Communications Act; indeed, some of these LECs have subsidiaries or affiliates that compete against CMRS operators. The FCC has jurisdiction to ensure that the LECs do not abuse their monopoly exchange carrier status to obtain unfair advantages against competitive services, such as CMRS paging.

In this regard, the Commission has stated that it "will retain at all times the power of the licensing function ... [and] inquire into any practices which ... appear to be unlawful,

anticompetitive, or inimical to the public interest ...." Allocation of Frequencies in 150.8-162 Mc/s Band, 14 FCC 2d 269, 271 (1968), aff'd sub nom., Radio Relay Corp. v. FCC, 409 F.2d 322 (2nd Cir. 1969) (the "Guardband Decision"). The FCC surely may investigate unfair competition allegations under its Title III licensing authority, since its "obligation to protect the public interest enables [the FCC] to assess whether a licensee has engaged in anticompetitive conduct." Memphis Radio Telephone Co., Inc. v. Mahaffey Message Relay, 49 FCC 2d 258, 259 (1974); see also, National Broadcasting Co. v. FCC, 319 U.S. 190 (1943).

The anticompetitive concerns raised by current LEC interconnect practices are bound to be exacerbated as CMRS licensees compete directly against the LECs for traditional local exchange customers. The rapid development of PCS, enhanced two-way paging, and wireless PBX services are evidence of this heightened competitive tension between CMRSs and LECs. It is thus imperative that the FCC exercise its authority to ensure that the LECs do not abuse their power over interconnect, to gain an unfair competitive advantage over paging operators.

H. The FCC has Jurisdiction to Review Contracts and to Strike Provisions that are Inimical to the Public Interest Under the Communications Act.

The FCC also has authority to disapprove anticompetitive intercarrier or carrier to customer contracts. See TRAC Communications v. Detroit Cellular Telephone Company, 5 FCC Rcd. 4647 (1989) (Federal District Court referred contract issues to the FCC under the doctrine of primary jurisdiction; the FCC ruled that contract provisions restricting resale of services were unlawful under Titles II and III of the Communications Act).

With the exception of any LEC that has agreed to compensate a paging carrier for local call termination (there are none, to Metrocall's knowledge), it is fair to assume that every

LEC/paging carrier contract in place today is anticompetitive, unjust, and unlawful, in violation of the Act. The FCC unquestionably has jurisdiction to review these contract terms, as it did in the 1970s when it reviewed RCC interconnect arrangements with the telephone companies, to determine whether these contractual arrangements are lawful under the Act and the FCC's Rules. See Offer of Facilities for Use by Other Common Carriers, 52 FCC 2d 727; Domestic Public Land Mobile Radio Service, 63 FCC 2d 87,88.

By scrutinizing these LEC/paging interconnect agreements, tariffs and arrangements in this proposed rulemaking proceeding, the FCC would "in no sense impinge on the regulatory ambit of a state commission ..."; rather, the FCC would merely be fulfilling its statutory duty to ensure that the LECs are not engaged in "unfair or illegal competitive practices ...." See, e.g., United Telephone Co. of Ohio, 26 FCC 2d 417, 419 (1970).

I. Substantial Federal Issues.

Finally, jurisdiction over these LEC/paging compensation matters is properly with this Commission under established precedents due to the substantial federal issues at stake. Cf. TPI Transmission Services, Inc. v. Puerto Rico Telephone Company, 66 RR 2d 257, 259 (Com.Car.Bur., 1989). It is obvious that the failure to establish fair, nationwide cost-compensation models for paging carriers, particularly in light of the FCC's goal of promoting the rapid development of an ever increasing number of interstate wireless services, "will substantially [adversely] affect the conduct or development of interstate communications." See Diamond International Corp. v. FCC, 627 F.2d 489, 493 (D.C. Cir. 1980). Therefore, there is a substantial federal interest in establishing fair and reasonable paging compensation regulations, to promote the development of interstate wireless services. To the extent that the LECs'

practices have interfered with these statutory goals and rights, and since state regulatory involvement in these matters will surely delay achievement of these ends, the FCC most certainly has jurisdiction over these matters. See, e.g., Radiotelephone Communicators of Puerto Rico, Inc. v. Puerto Rico Communications Authority, 64 RR2d 1404, 1406 (Com. Car. Bur. 1988).

CONCLUSION

For all the foregoing reasons, Metrocall respectfully requests that the Commission institute a formal rulemaking proceeding to develop rules, models, or proxies to compensate paging carriers for their termination of local exchange traffic, and, that the FCC assume exclusive jurisdiction to enforce paging compensation rights.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Bradley Norton, an employee of the law firm of Joyce & Jacobs, do hereby certify that on this 3rd day of September, 1997, copies of the foregoing Comments were sent by first-class U.S. mail, postage prepaid, to the following:

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